IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 11485 of 2007(P)

PETITIONER:

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1. VIJAYAKUMAR,S/O.RAMAN,MANNAMKONATHU PUTHAN VEEDU,CHOVALLUR MURI,KEERAPPARA VILLAGE, KOTTARAKKARA TALUK.

2. VIJAYADHARAN,S/O.RAMAN, MANNAMKONATHU PUTHAN VEEDU,CHOVALLUR MURI, KEERAPPARA VILLAGE,KOTTARAKKARA TALUK.

BY ADV. SRI.O.D.SIVADAS
SRI.S.SUNIL NARAYANAN

RESPONDENTS:

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1. SANTHAKUMARI,CHARUVILA PUTHEN VEEDU, THEVARUPOIKA,CHOVALLUR MURI,KEERAPPARA VILLAGE, KOTTARAKKARA TALUK.

2. THE SUB DIVISIONAL MAGISTRATE,KOLLAM.

3. THE SECRETARY,KAREEPRA GRAMA PANCHAYATH, KAREEPARA,KOLLAM.

BY ADV. SRI.M.K.CHANDRA MOHANDAS
SRI.PREMCHAND R.NAIR
GOVT. PLEADER SRI.K.J.MOHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 11485 OF 2007 P

Dated this the 27th July, 2007

JUDGMENT

Petitioners challenge Ext.P6 and seeks a declaration that the proceedings are illegal. They also seek a direction to respondents 2 and 3 not to restrain the functioning of the Pig Farm situated in the petitioners' property in Survey Nos.139/15-2, 140/4-2 and 140/7 of Kerrappara Village. Case of the petitioners, in brief, is as follows:

Petitioners are brothers and the first petitioner is conducting a Pig Farm after obtaining licence from all the Authorities. Petitioners have produced Exts.P1 and P2 which are the licences issued by the respondent Panchayat to the first petitioner for running the Poultry Farm and Pig Farm. The first petitioner had also applied for renewal of the licence by paying the prescribed fee as evident from Ext.P3. The Certificate issued by the Agricultural Officer is produced as Ext.P4 to show that the Bio Gas Plant is functioning properly. There is

reference to a Suit and in the Suit, it is stated that there is an interim order obtained in favour of the petitioners. First respondent has filed a Complaint before the Sub Divisional Magistrate under Section 133 of the Cr. P.C. and the Magistrate has issued Ext.P6 order directing the petitioners to stop functioning of the Farm. The second petitioner submitted Ext.P7 objection. According to the petitioners, Ext.P6 is illegal, arbitrary and the finding that there is encroachment to public land and the Bio-gas plant is not situated in his property is not correct.

2. I heard the learned counsel appearing for the parties. First respondent has filed a detailed Counter Affidavit producing Annexures R1(A) to R1(E) which include the complaint filed before the second respondent, Report of the Village Officer, complaint filed by the first respondent, the direction issued by the Tahsildar to the Village Officer to register a case against the petitioners, and also the guidelines issued by the DMO.

3. I find that Ext.P6 is a provisional order. I feel that a

decision should be taken in the matter after hearing all the parties and the interim order should continue. Accordingly, the Writ Petition is disposed of directing the second respondent to afford an opportunity to all the parties and take a decision on the complaint filed by the first respondent in accordance with law. A final decision shall be taken in accordance with law within two months from the date of production of a copy of this Judgment. Till such time as a decision is taken, the interim order passed by this Court will continue. It is open to the parties to raise all available contentions before the second respondent, who will consider the same and take a decision on the same in accordance with law.

K. M. JOSEPH, JUDGE

kbk.